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U.S. Federal Trade Commission

Functions of the Federal Trade Commission

[Washington, D.C.]

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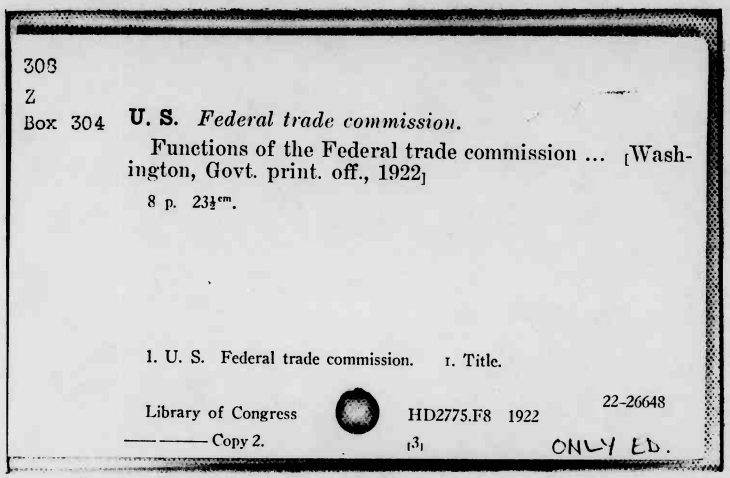

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U.S. Federal trade commission.

FUNCTIONS OF THE FEDERAL TRADE COMMISSION.

The Federal Trade Commission was created by an act of Congress approved September 26, 1914. The act was the final culmination of several years of study and agitation for such a law and was enacted with practically the unanimous approval of the House of Representatives and with but five dissenting votes in the Senate. The commission was formally organized and began to function March 16, 1915.

Five commissioners appointed for terms of seven years each by the President and approved by the Senate are authorized to administer the law. The commission is nonpolitical. No more than three members of one political party can serve simultaneously.

The principal functions of the Federal Trade Commission are:

(1) To prevent persons, partnerships, or corporations (except banks and common carriers) from using unfair methods of competition; administration of sections 2, 3, 7, and 8 of the Clayton Anti-trust Act.

(2) To gather, compile, and publish information regarding the organization, business, conduct, practices, and management of corporations or associations (except banks and common carriers) engaged in interstate or foreign commerce; and

(3) Administration of the Webb-Pomerene Export Trade Law.

The aim of the commission is to aid all honorable and honest business by keeping competition fair and open to all, instead of unfair and oppressive. Within its field of power lies the trade of the whole country in its larger (interstate and foreign) aspects, i. e., the extraction of raw materials, their manufacture, sale, and distribution. Railroads are not under the jurisdiction of this commission, nor are banks; but all other manifold activities of interstate commerce except meat-packing companies are within its sphere.

The work of the Federal Trade Commission is divided into three main divisions—the Legal Division, the Economic Division, and the Export Trade Division.

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LEGAL DIVISION.

On the legal side of its work the commission is charged with the multitudinous duties of correcting unfair methods of competition in interstate commerce.

In creating the commission the Congress wrote a single sentence which sums up the ideals of American business and is at once the Constitution, the Bill of Rights, and the Declaration of Independence of American business. These are the words: "Unfair methods of competition in commerce are hereby declared unlawful." This

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phrase was interpreted to mean that trickery and chicane; the rule of might as opposed to right; that unfairness, meanness, unsportsmanlike conduct, ruthlessness, dishonesty, and all such things have no place in American business; that no American business institution can be done to death by a more powerful or a less scrupulous competitor; and that an American business institution shall be safeguarded in liberty of acting to extend its proper activities and to grow and thrive so long as it recognizes the similar right of life and liberty in other business institutions.

Section 5 of the Federal Trade Commission Act reads as follows:

> Unfair methods of competition are hereby declared unlawful. Whenever the commission shall have reason to believe that an unlawful method of competition is being used, or has been used, it shall issue its complaint, the public interest appearing.

It "shall issue" its complaint; the law is mandatory. Thirty days after the issuance of the complaint the party complained of makes written answer. Trial of the issue is then had with the production of documentary and oral evidence, examination and cross-examination of witnesses. Thereafter the commission considers all the facts brought out at the hearing, and if the commission then has facts which confirm its original reason to believe, the commission issues an order to the man using the unfair method of competition ordering him to cease and desist such practice.

Among the many "unfair" methods of competition may be mentioned the following:

False advertising.

Misbranding of articles as regards the materials or ingredients of which they are composed, their quality or their origin or source.

Adulteration of various products, misrepresenting them as pure, or selling them under such names and circumstances that the purchaser would be misled into believing them to be pure.

Bribery of buyers or other employees of customers, with money, valuable presents, etc., to secure new customers or induce continuation of patronage. The payment of specified percentages of the purchase price of commodities to employees of customers who practically control the purchases through their recommendations, has been and still is deplorably prevalent in some industries. These industries are constantly appealing to the commission to clean them up. The commission has suggested to Congress that a Federal criminal law against commercial bribery should be passed and this suggestion has been vigorously approved by many great associations of business men.

Procuring the business or trade secrets of competitors by espionage on their plants, by bribing their employees, or by similar means.

Procuring breach of competitor's contracts for the sale of commodities by misrepresentation or by other means.

Making of false or disparaging statements respecting competitor's products, his business, financial credit, etc.

Sale of rebuilt articles of various descriptions—for example, rebuilt automobile tires and of old motion-picture films slightly changed and renamed—as and for new products.

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Giving away of goods in large quantities to hamper and embarrass small competitors.

Sales of goods at or below cost to accomplish the same result.

Sales of goods at or below cost, as "leaders," coupled with statements misleading the public into the belief that they were sold at a profit by reason of the seller's superior facilities for manufacturing, purchasing, etc.

Bidding up the prices of raw materials to a point where the business is unprofitable for the purpose of driving out financially weaker competitors.

Tampering with and misadjusting the machines sold by competitors for the purpose of discrediting them with purchasers.

Trade boycotts or combinations of traders to prevent certain wholesale or retail dealers or certain classes of such dealers from procuring goods through the usual channels.

Passing off of the products of one manufacturer for those of another by imitation of product, dress of goods, or by simulation of advertising or of corporate or trade names.

This is what happens under section 5. A man writes to the Federal Trade Commission and complains that Jones is unfair. This letter is docketed as an application, and it does not make any difference whether it comes from a business man or a farmer using plain writing paper, or from an attorney using legal phraseology.

This complaint, if the commission is seen to have jurisdiction, is docketed at once as an application and is given a number. It then goes to an examiner. The examiner makes a thorough investigation, reports to the chief examiner, who studies it and makes his recommendations. That recommendation goes to a board of review made up of two lawyers and one economist. They study the complaint and report. First they ask: Is it in interstate commerce? Because if it is not, the commission can not touch it. Next, is it an unfair method of competition? Is it competition at all? That point settled, then comes the most important point to be considered. It is true that Jones and Brown as competitors may be quarreling but the commission can not settle all the private quarrels between competitors in the United States. Is this act of Jones unfair competition and in commerce and even if it is, *is the public interest affected?* If the public interest is not affected the commission has nothing to do with it. But if the public interest appears, if the act is interstate commerce, if it appears unfair, the board of review recommends that a complaint be issued.

The application then goes to a commissioner, who studies it. He reviews what the board has said and what the examiner has said. Then if he believes that it is in interstate commerce, that it is an unfair method of competition, that *the public interest* appears, he recommends to the full commission that a complaint issue. Many of these questions are difficult. If a commissioner disagrees with the board of review, the board is invited to defend its position before the full commission. Finally a vote is taken by the commission.

If a complaint is ordered, complaint issues and for the first time the world knows about it. So far the commission has merely cited the respondent to appear and disprove or defend the practice. After 30 days or more there is a complete hearing and all the testimony

is finally brought before the commission. If it is believed then that the practice was unfair, that is, that the original reason to believe that it was unfair is confirmed, then the commission issues an order upon the respondent to cease and desist.

Experience has shown that about two out of three of the complaints which are brought to the commission's attention are not such as to warrant any formal proceedings and those matters are dismissed without annoyance to the respondent, without publicity, and without public knowledge.

Since the organization of the commission, and up to July 1, 1922, more than 3,000 applications for complaint have been docketed and have passed through or are passing through the procedure above outlined.

Countless other applications made by one business man against another have been dismissed without docketing, after a preliminary inquiry has plainly shown no cause of action.

CLAYTON ACT FUNCTIONS.

In addition to the substantive provisions contained in the Federal Trade Commission Act with reference to unfair methods of competition, the Clayton Act contains certain prohibitions, the enforcement of which is confided to the Federal Trade Commission, as to corporations under its jurisdiction. The provisions of the law are very minute and only the broad features are specified herein.

Price discrimination.—Section 2 prohibits, in certain cases, price discrimination where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Tying contracts.—Section 3 prohibits, in certain cases, so-called "tying contracts," that is, contracts whereby, as a condition of sale or lease of commodities, the seller or lessor exacts from the purchaser or lessee an agreement that he shall not use or deal in other commodities except those furnished by the seller or lessor, where the effect may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

Holding companies.—Section 7 prohibits, in certain cases, so-called "holding companies," or the ownership by one company of the stock of another, where the effect may be to substantially lessen competition between the companies concerned or to restrain interstate commerce or tend to create a monopoly.

Interlocking directorates.—Section 8, provides that two years after the enactment of the law no person at the same time shall be a director in any two or more corporations engaged in interstate or foreign commerce, other than banks or common carriers, any one of which has more than $1,000,000 capital, surplus, and undivided profits, if they are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws.

Enforcement of the prohibitions of the Clayton Act.—The authority to enforce the foregoing provisions of the Clayton Act is vested in the Federal Trade Commission, as to all corporations which come within its jurisdiction, by section 11 of the said act.

THE ECONOMIC DIVISION.

One of the functions of the Federal Trade Commission is to find the facts relating to the great basic commodities—what the situation surrounding those basic commodities is in truth. It is a very difficult task and is sometimes accompanied by criticism from those into whose business the commission has been directed to inquire.

The commission has already gathered and published for the use of the Congress, the departments, and the public a great deal of information regarding many of the essential industries of the country. Practically all of the economic inquiries have been made at the request of the Congress or the President to whom reports have been or are now being made, or were undertaken in cooperation with other departments of the Government.

One of the largest tasks of the economic division was during the three years of the war period. This was the securing of cost of production data with respect to many of the basic industries, in connection with which information was also generally obtained showing actual prices realized and the facts regarding profits and investments. It has been roughly estimated that the total investment involved in the different industries examined was in the neighborhood of $20,000,000,000, and their annual output was about $30,000,000,000.

The total amount of money which was saved to the Government during the war through the work of the commission is impossible of even approximate estimate, but the savings were undoubtedly very large, since the Government's war contracts were based on the cost findings of the commission.

Embraced in the cost investigations and in the general economic inquiries were the principal mining and quarrying industries, including coal, iron ore, copper, and other nonferrous metals; petroleum, clay, sand, and gravel, and various mineral materials; the principal manufacturing industries, including iron and steel and their products, machinery and engines, cement, brick, tile, and other mineral building materials; acids, alkalis, and other chemicals; paper and paper products; lumber and its products; refined mineral oils, glycerin, vegetable oils, meat and its by-products, flour and bread, canned vegetables, fruits and fish, textiles and garments, leather and shoes, etc., besides various purely trading activities, such as in coal, grain, hides, wool, rags, cloth, food products, etc.

Probably no better explanation of the functioning of the economic division of the commission could be given than to show the course pursued—a typical investigation. For this purpose there is herewith presented a brief outline of the procedure and findings in the investigation of the meat-packing industry jointly ordered by the President and the Congress.

It is interesting to note here that the report made by the commission on the meat-packing industry was quoted at some length by Chief Justice Taft who rendered the United States Supreme Court's recent decision against an action which sought to set aside the so-called Packers and Stockyards Act.

In this inquiry two general methods were followed. Facts as to production or distribution and storage were secured in large measure by schedule, supplemented by extensive work by accountants and

agents in the field, examining the records of the companies and compiling data therefrom. Facts as to competitive conditions in the meat industry and some of the other food industries in which the meat packers are engaged were secured through interviews by field agents and through the examination of correspondence files and other corporate records.

The other method was by public hearings of inquiry; such hearings being held in Boston, Philadelphia, Chicago, St. Paul, Omaha, Kansas City, and Washington.

These hearings were held to supplement, connect up, and make clear the facts recited in some of the documentary evidence found in the files.

The taking of this oral testimony under subpœna was not an adversary proceeding, like a trial in court, but was only an additional means of finding facts germane to the inquiry imposed upon the commission by the letter of the President of February 7, 1917. That letter directed the commission to investigate, "to ascertain the facts bearing on the alleged violation of the antitrust acts, and particularly upon the question whether there are manipulations, controls, trusts, combinations, conspiracies, or restraints of trade out of harmony with the law or the public interests."

Among the facts developed by the investigation was the extensive control exercised by the five principal packing companies—Swift & Co., Armour & Co., Morris & Co., Wilson & Co. (Inc.), and Cudahy Packing Co.—over several of the food industries and by-product industries in which they are factors, and over facilities used in connection therewith.

Data as to such industries as poultry, eggs, butter, cheese, canned goods, including fish, vegetables, fruit, and milk, indicated that the control of distribution in all these lines was already considerable and was growing.

As to combination, controls, conspiracies, and restraints out of harmony with the law and the public interest, the inquiry traced developments from 1890, when a committee of the United States Senate found and reported agreements between Armour, Swift, Morris, and Hammond to refrain from competition with collusive prices and divided territory.

From 1893 to 1896 there was a pool of the same companies with the Cudahy Packing Co. and one other, meeting every Tuesday afternoon, Henry Veeder acting as secretary. This was testified by Veeder in 1912. Territory was divided, volume of business apportioned, penalties assessed for violation.

From 1898 to 1902 there was a new pool, to which Schwarzschild and Sulzberger was an added party.

In 1902 the Department of Justice filed charges of conspiracy and restraint against the big packers, and in 1903 a permanent injunction was issued against them. Meanwhile a $60,000,000 merger of these companies was planned. It was abandoned because of the panic of 1903, but a number of the independent plants which had been secretly bought for the merger were turned over to the National Packing Co., a $15,000,000 corporation owned by Armour, Swift, and Morris. Veeder was secretary, and the directors met at the same hour on Tuesday afternoon as in the old pool.

This effective plan continued till 1912, when, after failure of a criminal suit, threat of a civil suit caused dissolution of the National Packing Co., its plants being apportioned among Armour, Swift, and Morris.

The old pool of meat shipments has now been replaced by a simpler, more effective "live-stock pool" or division, on agreed percentages, of all live stock coming to market, the cattle percentage being approximately: Swift, 34 per cent; Armour, 27 per cent; Morris, 18; Wilson, 11; Cudahy, 10.

Since 1913 these percentages have held year by year, with scarcely 1 per cent variation. This agreement is an automatic regulator of the relative volume of packing-house products of these companies.

Among the methods of unfair competition used by the big packers of which the commission found evidence may be mentioned the following: Bogus independents, local price discriminations, short weighting, acquiring stock in competing companies, shutting competitors out of live-stock markets, and manipulation of live-stock prices.

It should be noted also that there were found to be no less than 108 companies in which one or more of the great packers were jointly interested and most of which they controlled.

The mass of facts and evidence secured in the investigation was compiled and digested and published in several volumes for use of the Congress and the general public.

EXPORT TRADE DIVISION.

The foreign-trade activities of the commission may be divided into two groups: (1) Administration of the Export Trade Act (Webb-Pomerene Law); (2) investigation of trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions may affect the foreign trade of the United States, as provided in section 6 (*h*) of the Federal Trade Commission act.

In 1916 the Federal Trade Commission, in its report to Congress on cooperation in American export trade, emphasized the rapid growth of trade in foreign countries and the encouragement by foreign Governments of buying and selling combinations with which American exporters must deal and compete. To meet this important national need, the Export Trade Act was passed on April 10, 1918.

The primary purpose of the Export Trade Act was to facilitate the moving of American goods to foreign markets, to serve as an encouragement to exporters and to enable them to compete successfully with buying and selling combinations of other countries.

The act authorizes the formation of "associations" entered into for the sole purpose of engaging in export trade, these associations to be exempt from the antitrust laws of the United States, with the proviso that there shall be, through the association, no restraint of the export trade of any domestic competitor, no enhancing or depression of prices, or substantial lessening of competition within the United States.

Section 1 of the act defines "export trade" and "association."

Sections 2 and 3 provide exemption from the antitrust laws under certain conditions.

Section 4 extends the jurisdiction of the commission under the Federal Trade Commission act to "unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States."

Section 5 provides for the filing of papers by associations with the Federal Trade Commission and other details of administration.

MEMBERSHIP OF ASSOCIATIONS.

The membership of Webb-Pomerene association includes about a thousand plants and factories scattered over 41 States of the Union and employing a large number of workers. Commodities of all sorts and kinds are shipped to all corners of the globe.

Some of the associations are composed of small concerns which otherwise could not hold their own in foreign markets. Others are formed by well-established houses, which nevertheless are benefited by cooperation under the act. Several represent a large percentage of the industry in which they are engaged.

PRACTICES OF MERCHANTS IN FOREIGN TRADE.

In the matter of investigations of foreign trade practices under section 6(*h*) of the Federal Trade Commission act, the services of the commission have been utilized by the Commerce Department, State Department, the Department of Justice, and other governmental and private offices.

Some 50 complaints against American concerns (not Webb Law associations) have been investigated during the past year, involving breach of contract, fraud, and other practices injurious to American foreign trade. Some of these complaints are found to be without merit and the report of the commission may serve to clear the respondent of unjust accusation. Others are made against "fly-by-night" concerns that are difficult and sometimes impossible to locate; but, for the most part, the trouble is largely due to negligence or procrastination.

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